12-20-2011

# State v. Mangum Appellant's Brief Dckt. 38294

IN THE SUPREME COURT OF THE STATE OF IDAHO

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| STATE OF IDAHO, | ) | |
| | ) | |
| Plaintiff-Respondent, | ) | NO. 38294 |
| | ) | |
| v. | ) | |
| | ) | |
| RODERICK RAINGER MANGUM, | ) | APPELLANT'S BRIEF |
| | ) | |
| Defendant-Appellant. | ) | |
| | ) | |

# BRIEF OF APPELLANT



APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

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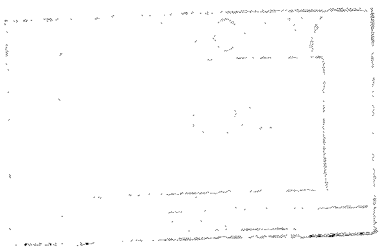

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## STATEMENT OF THE CASE

### Nature of the Case

Mr. Mangum appeals from his judgment of conviction and sentence to a unified term of fourteen years, with five years fixed, for forgery of a financial transaction card. (R., pp.242-44.) Specifically, Mr. Mangum challenges both the district court's denial of his motion to dismiss the criminal information against him based on a violation of the interstate agreement on detainers (*hereinafter,* IAD), as well as the district court's refusal to suppress evidence gained from the execution of a search warrant predicated on information and observations made by officers' unlawful entry into Mr. Mangum's apartment. This case involves consideration of two issues; the first requires a determination of what triggers the 180 day speedy trial requirement of the interstate agreement on detainers, while the second involves a determination of whether an officer's uninvited entry into a defendant's home precludes the State from relying upon the officer's observation of items in plain view to obtain a search warrant.

Mr. Mangum entered a conditional guilty plea to forgery of a financial transaction card on August 17, 2010, preserving the right to appeal these issues if the district court denied him relief on either ground. (R., pp.204-216; 08/17/00 Tr., p.7, L.13 – p.24, L.10.)[1]

### Statement of the Facts and Course of Proceedings

**IAD:** On January 12, 2009, Mr. Mangum was charged by criminal complaint with two counts of felony grand theft by unauthorized control, stemming from events

[1] Because there are multiple separately bound transcripts in the record on appeal, the transcripts will be referenced by the date of the hearing.

occurring in Ada County November 7-8, 2008. (R., pp.8-9) At the time the complaint was filed, Mr. Mangum was being held in custody in California and a copy of the arrest warrant from Idaho, stemming from the complaint, was faxed by Ada County to the Orange County Sheriff's Office on June, 7, 2009. (R., pp.11-12,37-39.) Upon learning of the pending charges, Mr. Mangum wrote letters to the Ada County courts, beginning in June and extending through December of 2009, asking to be extradited from California to Idaho to resolve his case. (R., pp.11-22, 24-29, 31-32.) Many of these letters and requests were forwarded to the Ada County Prosecutor's office, including a letter dated June 4, 2009 (R., p.11) and a Notice and demand for trial dated July 3, 2009. (R., p.19.) In addition, Mr. Mangum's father contacted the Ada County Prosecutor's office on Mr. Mangum's behalf and received a return call from a deputy prosecuting attorney advising him there was nothing the prosecutor could do to move the process along, but that Mr. Mangum could contact the Ada County Sheriff's Office and the California Department of Corrections. (Defendant's Exhibit O, admitted at 8/3/10 Tr., p.88, L.23-p.89, L.10; 8/10/10 Tr. p. 118, Ls.13-20.)

A status hearing was held in Mr. Mangum's absence on October 19, 2009. (R., p.30.) At the hearing, the deputy prosecuting attorney indicated that Mr. Mangum is in the custody of the California Department of Corrections and that the prosecutor had been in contact with both the Department of Corrections and Mr. Mangum's public defender. (10/19/09 Tr., p.6, Ls.16-23.) The prosecutor related that Mr. Mangum "apparently has been given the forms to start the process to get back here," and "[e]very couple of days I have been calling the Department corrections [sic], reminding them, and they are telling me they are processing that." (10/19/09 Tr., p.6, L.25 – p.7, L.4.) The prosecutor indicated that "[o]n our side, we will fill them out, do what we need to do,

and get them in ourselves." (10/19/09 Tr., p.7, Ls.5-6.) The district court then summed up its understanding of the proceedings thus far:

> So, for the record, the status of the matter is this: That Mr. Mangum is in - - formally in the Department of Corrections for California's custody. He has apparently been, according to Mr. Dinger, given the proper forms for processing this matter under Idaho Code 19-5001, the interstate compact on detainers, and we anticipate receiving additional forms from him.
>
> In the meantime, the court will have a copy of the letter, the latest correspondence from the defendant copied and forwarded to the Prosecuting Attorney's office to your attention, Mr. Dinger.

(10/19/09 Tr., p.8, L.18 – p.9, L.6.) On December 16, 2009, Mr. Mangum filed a notice of imprisonment and request for disposition, which was submitted by the prison facility where he was being housed in Soledad, California to Ada County prosecutors. (R., pp.35-36) Finally, on January 4, 2010, an IAD Evidence of Agents Authority to Act for Receiving State, was signed by the Ada County Prosecutor requesting the transport of Mr. Mangum from California to Idaho. (R., pp.33-34.)

Mr. Mangum appeared by video for arraignment on February 5, 2010, he was appointed a lawyer and the matter was set for preliminary hearing on February 19, 2010. (R., pp.40-41.) According to minutes from the February 19th hearing, because the public defender had a conflict of interest and new counsel needed to be appointed to represent Mr. Mangum, the matter was reset for preliminary hearing on March 4, 2010. (R., pp.47-48.) Conflict counsel entered a notice of appearance on February 23, 2010 and on March 4, 2010, the prosecutor filed an amended complaint alleging one count of forgery of a financial transaction card, three counts of criminal possession of a financial transaction card, and one count of misappropriation of personal identifying information, all felony offenses. (R., pp.49-50, 54-56.) Mr. Mangum was arraigned on the Amended Complaint on March 4, 2010 and waived his right to a preliminary hearing. (R., p.57.)

A criminal information was filed and the matter was set for arraignment in district court on March 16, 2010. (R., pp.58, 62-64.) At the March 16, 2010 hearing, after Mr. Mangum refused to waive his right to a speedy trial, a jury trial was scheduled to begin May 12, 2010. (R., pp.65-68; 3/16/10 Tr., p.7, Ls.16-24.)

At the pretrial conference held on April 27, 2010, Mr. Mangum's trial was rescheduled for August 9, 2010, to give the parties and the Court time to address Mr. Mangum's pretrial motions, including the motion to dismiss under the IAD. (4/27/10 Tr., p.9, Ls.13-15; p.15, Ls.7-25.) Mr. Mangum declined to waive his right to speedy trial. (4/27/10 Tr., p.11, L.17-p.12, L.18.) The Court held hearings on Mr. Mangum's Motion to Dismiss[2] due to an IAD violation on August 3 and 10, 2010. Subsequently, Mr. Mangum entered a conditional guilty plea to forgery of a financial transaction card on August 17, 2010, preserving the right to appeal his motion to dismiss if the district court denied him relief on that ground. (R., pp.204-216; 08/17/00 Tr., p.7, L.13 – p.24, L.10.) The district court then entered an order denying Mr. Mangum's Motion to Dismiss under the IAD on September 27, 2010, finding Mr. Mangum was given a trial date well within the IAD requirements. (R., pp.229-234)

**Entry Into Apartment:** On November 10, 2008, investigators with the Idaho Lottery Enforcement Division were investigating Roderick Rainger Mangum in connection with the theft of lottery tickets and the purchase of gift cards with stolen and fictitious credit card numbers, which gift cards were used to buy merchandise, including

[2] Prior to the Motion hearings, Mr. Mangum filed his Motion to Dismiss, the State filed a Response, and Mr. Mangum filed a Reply. (R., pp.73-74,78-77,146-176,179-183.) After the Motion hearings, Mr. Mangum filed Supplemental Argument (R., pp.189-90) and both parties submitted a stipulation regarding the evidence that was presented at the hearings and the evidence the parties wanted the court to consider. (R., pp.196-197.)

lottery tickets. (8/10/10 Tr., p.126, L.6 – p.130, L.2; p.139, L.5-p.140, L.13; Presentence Investigation Report (*hereinafter,* PSI), p.2.) During their investigation, Idaho Lottery investigators discovered Mr. Mangum had a warrant outstanding for his arrest in California and contacted the U.S. Marshal's office to advise them they had a lead on Mr. Mangum's whereabouts. (8/10/10 Tr., p.128, L.24 – p.129, L.12.) Officers with the U.S. Marshal's office asked Idaho investigators to meet them at the address where it was suspected Mr. Mangum was residing. (8/10/10 Tr., p.129, Ls.1-12.)

Four or five agents met Idaho officers at Mr. Mangum's suspected residence at 3132 Esquire. (8/10/10 Tr., p.129, Ls.6-12; 8/3/10 Tr., p.31, L.3 – p.32, L.17; 8/3/10 Tr., p.50, Ls.2-p.51, L.2.) Amber French, Deputy Director of the Enforcement Division for the Idaho Lottery, made efforts to verify whether the apartment number they had for Mr. Mangum was correct. (8/10/10 Tr., p.130, Ls.7-15.) The first apartment Ms. French went to was not Mr. Mangum's apartment, but she was directed to another building in the complex across the parking lot. (8/10/10 Tr., p.130, Ls.16-20.) En route to the second apartment, Ms. French noticed a man at the dumpster holding a trash bag. (8/10/10 Tr., p.130, Ls.20-25.) Ms. French and Detective Hazel, an investigator with the Idaho Lottery, were walking across the parking lot together at the time and they both suspected the man by the dumpster may be Mr. Mangum. (8/10/10 Tr. p.130 L.23 – p.131, L.2.) The federal officers did not think the man by the dumpster was Mr. Mangum, but chief deputy U.S. Marshal Platt decided to follow the man while Ms. French proceeded to the second apartment. (8/10/10 Tr., p.131, Ls.15-24, p.147, Ls.8-17.)

Mr. Platt followed and then approached the man, later identified as Mr. Mangum, identified himself as being with the U.S. Marshalls, and asked Mr. Mangum if he was

"Derrick." (8/10/10 Tr., p.148, L.s14-19.) Mr. Platt made up the name, which he does routinely when looking for fugitives or people with active warrants, to de-escalate the situation and put suspects at ease. (8/10/10 Tr., p.159, Ls.2-22.) Mr. Mangum responded, "No. My name is Rod." (8/10/10 Tr., p.149, Ls.14-17.) When Mr. Platt told Mr. Mangum he needed to see some identification, Mr. Mangum maintained that he was not Derrick and he did not have any identification on him. (8/10/10 Tr., p.149, Ls.14-22.) Mr. Platt told Mr. Mangum "[w]ell, let's go in your apartment and get your ID[,]" and when Mr. Mangum maintained he was not Derrick, "[w]ell, I'd like to see some ID, and then I can prove that you're not Derrick, who we're looking for." (8/10/10 Tr., p.149, L.23- p.150, L.5.) They started walking toward Mr. Mangum's apartment, which he identified to Mr. Platt as "the one with open door." (8/10/10Tr., p.150, Ls.8-15.) When they got to the apartment, Mr. Mangum kept saying "I'm not Derrick that you're looking for. But, here, my ID is on the table here. Let me find my wallet."[3] (8/10/10 Tr., p.151, Ls.2-7.) According to Mr. Platt, Mr. Mangum walked into the apartment first and Mr. Platt followed. (8/10/10 Tr., p.151, Ls.7-18.)

According to Ms. French, when she reached Mr. Mangum's apartment (the second apartment), the door was open. (8/10/10 Tr, p.132, Ls.1-2.) Ms. French was with another officer at the time and decided to knock on the door, announcing that she was Amber French and she was from "ABC Realty." (8/10/10 Tr., p.132, Ls.3-7.) After announcing her presence, Ms. French noticed there was cable guy in the apartment installing cable. (8/10/10 Tr., p.132, Ls.8-9, p.132, Ls.13-14.) About five feet in front of

[3] According to Mr. Platt, as he and Mr. Mangum were walking toward his apartment, Mr. Mangum "kept telling me that he's not Derrick. And I kept saying, 'Well, just prove it to me, and you can go.'" (8/10/10 Tr., p.154, ls.1-4.) Mr. Platt also testified that Mr. Mangum told him, "Let's go back to my apartment and get my license. It's in my wallet in my apartment." (8/10/10 Tr., p.160, Ls.10-13.)

her inside the apartment, Ms. French noticed a kitchen table with a scanner or printer or computer on it, as well as various credit cards. (8/10/10 Tr., p.133, Ls.9-12, p.134, Ls.1-17.) Ms. French believed the items on the table could be related to the Lottery investigation. (8/10/10 Tr., p.142, Ls.6-13.)

Ms. French testified that Detective Hazel and the federal officers walked up behind her with Mr. Mangum as she was knocking on the door. (8/10/10 Tr., p.133, Ls.15-19, p.134, Ls.18-25.) Specifically, Ms. French noticed Detective Hazel, Mr. Platt, and Mr. Mangum walking together toward the apartment. (8/10/10 Tr., p.134, Ls.18-25.) Ms. French entered the apartment, but did not recall if she was the first person to go inside: "when I saw them coming, they – I think we all went in at the – like I stepped in front of them. I'm at the door, and they're up behind me. I stepped into the side, I'm looking at the cable guy." (8/10/10 Tr., p.134, Ls.17-22.) Ms. French admitted that she may have been the first person to enter Mr. Mangum's apartment. (8/10/10 Tr., p.136, Ls.21-23.) Mr. Platt testified that Mr. Mangum retrieved his wallet "off the table and gives us the ID. And at that point, when he handed me the ID, I arrested him." (8/10/10 Tr., p.152, Ls.14-17.) Ms. French did not arrest Mr. Mangum, but saw other officers take him to the ground, between the door and the kitchen table, inside the apartment. (8/10/10 Tr., p.137, Ls.10-18.)

Mr. Mangum testified. He confirmed the events leading up to his encounter with Mr. Platt were consistent with Ms. French's and Mr. Platt's testimony, except Mr. Mangum recalled Mr. Platt pulling his weapon when he first approached Mr. Mangum and asked if he was Derrick. (8/3/10 Tr., p.51, L.8 - p.53, L.45.) When Mr. Mangum denied being Derrick and identified himself as Rod Mangum, Mr. Platt advised he needed to confirm that by seeing Mr. Mangum's identification. (8/3/10

Tr., p.53, Ls.1-16.) When Mr. Mangum and Mr. Platt arrived at his apartment door, Detective Hazel and Ms. French were already there. (8/3/10 Tr., p.53, Ls.17-24.) While still outside the apartment, Mr. Mangum again repeated that he was not Derrick, and Mr. Platt responded, "[w]e just need your ID. Where is your ID?" (8/3/10 Tr., p.53, L.25 – p.54, L.4.) When Mr. Mangum told Mr. Platt his ID was "right in there" and pushed the door open, Mr. Platt again asked where Mr. Mangum's ID was, and Mr. Mangum stated, "My wallet is right there." (8/3/10 Tr., p.53, L.21 – p.55, L.5.) Mr. Platt then entered the apartment, picked up a gift card off the table, then picked up the wallet after Mr. Mangum advised him and the other officers that he wanted them out of his house if they did not have a search warrant. (8/3/10 Tr., p.55, L.7 – p.56, L.16.) After Mr. Mangum was placed under arrest, before a search warrant had been issued, Detective Hazel and Ms. French "searched [his] house." (8/3/10 Tr., p.56, L.12 – p.57, L.7.)

Mr. Mangum filed a motion to suppress evidence discovered during the officers' unlawful entry into his apartment. (R., pp.76-77, 148-151.) Hearings on the motion were held August 3 and 10, 2010, at which time the court heard testimony from Mr. Platt, Ms. French, Mr. Mangum and Boise City police Detective Justin Kendall. Subsequently on August 31, 2010, the Court issued a written decision denying Mr. Mangum's motion to suppress, concluding Mr. Mangum had impliedly consented to the officers' entry into his apartment. (R., pp.218-223.).

## ISSUES

1. Whether the district court erred in denying Mr. Mangum's motion to dismiss based on the State's failure to comply with the IAD's 180 day deadline?

2. Whether the district court erred in concluding Mr. Mangum impliedly consented to law enforcement officers' warrantless entry into his apartment?

## ARGUMENT

### I.

### The District Court Erred In Denying Mr. Mangum's Motion To Dismiss Based On The State's Failure To Comply With The 180 Day Deadline Under The Interstate Agreement On Detainers

#### A. Introduction

For more than six months, through a series of letters and one telephone call, Mr. Magnum repeatedly asked judges of the Fourth Judicial District Court and Deputy Ada County prosecutors to bring him back to Idaho to resolve the pending criminal complaint against him. Despite these numerous requests, and despite the fact that a fugitive hold from Ada County was placed on Mr. Mangum on May 22, 2009, Mr. Mangum was not arraigned on the Ada County charges until February 5, 2010. (R., pp.40, 90.) The district court concluded that the timeline of the IAD was not triggered until a *formal* detainer from Idaho was ultimately was lodged in California against Mr. Mangum on December 16, 2009 and the *formal notice* was sent from the California facility where Mr. Mangum was being held to the Ada County Prosecutor's Office on December 28, 2009 (R., pp. 142-43,167, 233.) Mr. Mangum asserts that the district court erred in failing to grant his motion to dismiss because both the prosecutor and court had actual notice of Mr. Mangum's filing as early as August 28th, but as late as October 19, 2009, and Mr. Mangum substantially complied with the IAD.

#### B. The District Court Erred In Denying Mr. Mangum's Motion To Dismiss Based On The State's Failure To Comply With The 180 Day Deadline Under The IAD

The district court erred in concluding that Mr. Mangum's right to a speedy trial, as guaranteed by the IAD, was not invoked until two events occurred: (1) Idaho lodged a *formal* detainer against Mr. Mangum in California; and (2) Idaho received *formal notice*

from Mr. Mangum, through the California Warden's Office, requesting a speedy trial. Based on these findings, the district court concluded that Mr. Mangum's speedy trial rights under the IAD were not violated. As articulated below, Mr. Mangum asserts that the district court erred in denying his motion to dismiss.

The Federal Government, the District of Columbia, and forty-eight (48) states, including Idaho, have entered into the Interstate Agreement on Detainers. *Alabama v. Bozeman,* 533 U.S. 146, 148 (2001). The purpose of the IAD is set forth in the text of the statute itself.

> The agreement on detainers is hereby enacted into law and entered into by this state [Idaho] with all other jurisdictions legally joining therein in the form substantially as follows:
>
> (a) The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

Idaho Code §19-5001(a). In accordance with this purpose, the IAD creates uniform procedures for expeditiously resolving pending charges and detainers against prisoners in the party states. Specifically, the IAD provides that once a person

> has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within on hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his

request for a final disposition to be made of the indictment, information or complaint[.]

I.C. §19-5001(c)(1). Because the IAD is a congressionally sanctioned compact, it falls within the purview of the Compact Clause of the United States Constitution; it is a federal law subject to federal construction. *New York v. Hill,* 528 U.S. 110, 111 (2000); United States Constitution, Art. I, §10, cl.3. Both California and Idaho are parties to the IAD agreement. I.C. §19-5001(a); Cal Penal Code §1389 *et seq.*

1. The District Court Erred In Concluding That Mr. Mangum's IAD Rights Were Not Invoked Until Idaho, The Requesting State, Received ***Formal*** Notice From California, The Sending State

After Mr. Mangum's arrest on November 10, 2008, he was transported to California and incarcerated in the Orange County Jail pending resolution of the California case that gave rise to his arrest. (R., p.11.) At least as of June 10, 2009, and as late as August 7, 2009, California authorities had no records reflecting a hold from the State of Idaho for Mr. Mangum. (R., pp.130,132; Def.Ex.N.) Although Mr. Mangum tried to invoke his IAD rights with respect to the Idaho charges on June 15, 2009, he was advised by California authorities that he could not do so until he was sentenced in California. (R., pp.137,139.) Mr. Mangum was sentenced to serve a prison sentence in California on June 30, 2009, and was physically transferred to a prison facility on July 22, 2009. (R., pp.93-94,110, 229; 8/3/10 Tr., p.66, L.12 – p.67, L.4.) On June 7, 2009, "T Bellizzi" from Ada County faxed an arrest warrant to "Orange Co. So., Ca." in Ada County case CR-FE2009-000744, ordering Mr. Mangum be arrested and held on $50,000 bond. (R., pp.37-39.,88-89.) For some reason, the warrant was not considered a hold until September 11, 2009, when California Department of Corrections

and Rehabilitation recognized the Ada County warrant. (R., p.140.) California did not process the warrant until October 23, 2009. (R., p.124)

In addressing Mr. Mangum's IAD challenge, the district court treated the warrant as a formal detainer as of September 11, 2009, the date California apparently deemed the warrant to be a detainer. (R., pp.140, 230.) The district court relied on testimony offered at the August 3, 2010 hearing from Cindy McDonald, the interstate coordinator for the Idaho Department of Correction, for its conclusion that a warrant does not constitute a detainer. (R., p.230). Ms. McDonald testified that the IAD procedure varies from state to state, but that in her experience in Idaho, a *hold* is placed on an offender for *tried* charges, probation violations, and parole violations. (8/3/10 Tr., p.27, L.16-p.28, L.9.) According to Ms. McDonald, the *hold* tells the prison "this agency would like to take custody of this individual when they're released. But the paperwork does not fall within the Interstate Agreement on Detainers, so they cannot initiate the [IAD] while he's [sic] in our custody." (8/3/10 Tr., p.28, Ls.2-9.) Ms. McDonald defined a detainer as "a certified information, complaint, or indictment with a request to place a detainer. That's how I accept the paperwork for a detainer. And they're for *untried charges*, felony charges." (8/3/10 Tr., p.11, Ls.9-12 (emphasis added).) When the Court asked Ms. McDonald what happens when a hold is the result of an arrest warrant on pending felony charges, she responded:

> Some agencies will do that. And usually when we place a hold for that, ***the reason we place the hold instead of possibly a detainer is because the inmate is going to be paroling within a short period of time or discharging his Idaho sentence***, and the time frame for the Interstate Agreement on Detainers is not applicable for placing a detainer against him. Because once you place a detainer and the person goes to the other jurisdiction, they go to the receiving state. Once they're finished with all of their charges, they have to be sent back to the sending state.

> If they're paroling or they're discharging, we don't want them back. So that's why occasionally, if it's untried charges, we'll place a hold because there's imminent release from prison.

(8/3/10 Tr., p.28, L.21 – p.29, L.11 (emphasis added).) Thus, Ms. McDonald's testimony seems to be that warrants based on untried felony charges can be considered detainers, depending on the length of the remaining prison sentence.

The United States Supreme Court has implicitly recognized that documents other than those explicitly labeled "detainers" may trigger the protection of the IAD. In *United States v. Mauro,* 436 U.S. 340, 349 (1978), the Supreme Court considered whether the IAD is triggered when the United States uses the writ of habeas corpus *ad prosequendum* (*hereinafter,* Writ) to obtain custody of state prisoners. The Court noted the Writ, including its historical role and function, "bear little resemblance to the typical detainer which activates the provisions of the [IAD] Agreement." *Id.* at 357.

In distinguishing the Writ from an IAD detainer, the Court recognized the following characteristics of a detainer: (1) it can be lodged against a prisoner at the behest of the prosecutor or law enforcement officer without judicial review; (2) it does not require the immediate presence of a prisoner but instead serves to put institution officials on notice that a prisoner is wanted by another jurisdiction "upon his release from prison"; and (3) further action is required by the receiving State to obtain the prisoner. *Id.* at 358. Although the IAD does not define a detainer, House and Senate reports relating to the IAD explain the detainer is "a notification filed with the institution in which a prisoner is serving a sentence, advising that he is wanted to face pending criminal charges in another jurisdiction." *Id.* at 359 (citations omitted). In contrast, Writs are immediately executed, they are issued by a federal court, and they have a long history dating back to the first judiciary act. *Id.* at 360-61. Given these differences, the

problems the IAD sought to eliminate do not arise with the Writ. Thus, the Court held that a Writ is not a detainer for purposes of the IAD. *Id.* at 361.

For the same reasons the *Mauro* Court found the Writ was not a detainer for IAD purposes, a *warrant is a detainer* for IAD purposes; it can be lodged against a prisoner at the behest of the prosecutor or a law enforcement officer; it does not require the immediate presence of a prisoner but instead puts institution officials on notice that a prisoner is wanted by another jurisdiction "upon his release from prison"; and finally, additional action is required before the receiving State can obtain the prisoner. *Id.* at 358. The warrant and the detainer are thus indistinguishable in their effect for IAD purposes.

This point was recognized by the United States Supreme Court in *Carchman v. Nash*, 473 U.S. 716,727 (1985). In *Carchman,* the Court determined the plain language of the IAD, as well as its legislative history, reflected that the IAD was intended only to apply to detainers premised on untried indictments, informations or complaints, thereby excluding detainers based on probation violations. *Id.* at 726-27. In reaching this conclusion, the Court cited to the IAD drafters' definition of a detainer under the IAD: "A detainer may be defined as a warrant filed against a person already in custody with the purposes of insuring that he will be available to the authority which has placed the detainer." *Id.* at 727 (quoting Suggested State Legislation, Program for 1957, p.74). While agreeing with this definition and the fact that a detainer could arise from parole or probation violations, the Court determined that by its own terms, the IAD did not apply to all detainers, only those arising from untried indictments, informations or complaints. *Id.*

The warrant in Mr. Mangum's case was signed by the magistrate after receiving a complaint, under oath, from the deputy prosecutor, alleging Mr. Mangum committed

two counts of felony grand theft by unauthorized control, in violation of I.C. §§ 18-2403(3), 18-2407(1)(b). (R., pp.88-89.) By its own terms, the warrant gave notice that it was premised on an untried complaint against Mr. Mangum for two felony grand theft counts. *See Pyzer v. State,* 109 Idaho 376 (Ct. App. 1985) (a warrant and request for extradition may constitute a detainer under I.C. §19-5001); *cf. State v. Smith,* 119 Idaho 11, 12 (Ct. App. 1990) (where defendant failed to establish a warrant for extradition was issued and served on Wyoming authorities demanding his appearance in Idaho, defendant's wavier of extradition did not trigger the IAD).

As a result, the district court erred in considering the date California began treating the warrant as a detainer to be the date of the detainer; instead, the date of the detainer is the date Mr. Mangum had a warrant outstanding against him in Idaho (Ada County), *and* was serving a sentence in a state prison: July 22, 2009. *See* I.C. §19-5001(c)(1) (once a person "has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner . . . ."); *Brewer v. State,* 128 Idaho 340, 343 (Ct. App.1996) (defendant became eligible for protections under the IAD only upon being placed in prison, but not while in county jail); *State v. Breen,* 126 Idaho 305, 308 (Ct. App. 1994) ("[T]he I.A.D. governs only when the defendant is serving a sentence in prison."). For these reasons, much like a prematurely filed notice of appeal (Idaho Appellate Rule 17; *Weller v. State,* 146 Idaho 652, 653-54 (Ct. App. 2008)), the warrant should be treated as a ripe, or perfected detainer, as of the date Mr. Mangum began serving his prison sentence in

California: July 22, 2009.[4] (R., pp.37-39.,88-89, 122; 8/3/10 Mot. Hrg. Tr., p.66, L.12 – p.67, L.4.)

2. The District Court Erred In Concluding That Mr. Mangum's IAD Rights Were Not Triggered Until The Prosecutor Received Formal Notice Of Mr. Mangum's Disposition Request

Although a detainer is a necessary predicate for application of the IAD, the 180 day speedy trial right is not triggered until the prosecuting attorney and appropriate court receive notice of an inmate's request for final disposition of the pending charges. I.C. § 19-5001 (c)(1). The district court concluded that despite Mr. Mangum's written requests to the district court and Ada County prosecutor's office, the IAD's 180 day speedy trial right was not triggered until the Ada County prosecutor received *formal* notice of Mr. Mangum's request to resolve the pending charges from the California Warden's office on December 28, 2009. (R., pp.167, 233.)

As previously noted, the IAD requires that when a person serving a prison sentence has an

> untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred eighty (180) days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information or complaint[.] . . . The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of the commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

[4] Mr. Mangum was received by the Department of Corrections and Rehabilitation on July 22, 2009, at the Wasco State Prison. (R., p.122) He was later transferred to another California prison, the Correctional Training Facility, on October 19, 2009. (R., p.124.)

I.C. § 19-5001 (c)(1).

Here, it is undisputed that Mr. Mangum sent numerous letters to the appropriate court and the Ada County prosecutor's office asking for a speedy trial and invoking the IAD. (R., pp.229-30.) It is also undisputed that Mr. Mangum invoked his constitutional right to a speedy trial and could do so by these written requests. *See, e.g., Smith v Hooey*, 393 U.S. 374, 383 (1969) (upon a defendant's demand, states have a constitutional duty to make a good faith, diligent effort to bring the defendant to trial).

Mr. Mangum testified and the State did not dispute that while he was in custody in California, first in the Orange County Jail and then later the Wasco State Prison and the Soledad Correctional Training Facility, he sent a number of letters, some certified, to both the court and the prosecutor's office seeking resolution of the pending Idaho charges. (8/3/10 Tr. p.57, L.15 – p.67, L.4; R., pp.95-109.) Mr. Mangum completed a "notice and demand for trial," which he addressed to the Ada County prosecutor's office, identifying his location in Wasco State Prison for the offense of commercial burglary, identifying the charge pending against him in Idaho, including the warrant number and County; Mr. Mangum submitted proof of service of the notice, which was mailed on August 21, 2009 and received by the Court on August 28, 2009. (R., pp.110-111.) These documents were mailed by Mr. Mangum, while he was in prison, to the prosecutor's office and were also routed by the court to the prosecutor's office on September 1, 2009. (R., pp.95-100,111.) At a status hearing held in Mr. Mangum's absence on October 19, 2009, Mr. Dinger, an Ada County Deputy Prosecutor was present and the issues of the detainer, Mr. Mangum's custody status, and the State's and the court's knowledge of these issues were addressed. (R., p.30; 10/19/09 Tr., p.6, L.25 – p.7, L.4 (Mr. Dinger informing the Court that Mr. Mangum is in the custody of the

California Department of Corrections and that he (Mr. Dinger) had been in contact with both the Department of Corrections and Mr. Mangum's public defender).)

Thus, as early as August 28th, but as late as October 19, 2009, both the court and the prosecutor's office had all of the information necessary under the IAD to address Mr. Mangum's request to have his Ada County charges resolved. Moreover, the negative effects of the detainer were felt by Mr. Mangum on October 23, 2009, when he was removed from general population and placed in Administrative Segregation based solely on the Ada County warrant. (Defendant's Exhs. J-K.)

The requirements necessary for a prisoner to invoke the protections of the IAD include: (1) a written detainer; (2) written notice to the appropriate court of the prosecuting officer's jurisdiction of the place of the prisoner's incarceration; (3) a request for a final disposition of the pending indictment, information or complaint; (4) a certificate of the appropriate official having custody of the prisoner stating the term of the commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Idaho Code §19-5001(c)(1). One of the primary purposes of passage of the IAD was to minimize the adverse effects detainers had upon prisoners: "[b]ecause a detainer remains lodged against a prisoner without any action being taken on it, he is denied certain privileges within the prison, and rehabilitation efforts may be frustrated." *United States v. Mauro,* 436 U.S. 340, 360 (1978). In so seeking to achieve the IAD's intended purpose, the Idaho Legislature instructed the reviewing court that "This agreement shall be liberally construed so as to effectuate its purpose." Idaho Code § 19-5001(i)

As discussed above, a written detainer was issued for Mr. Mangum. Thereafter, through his written notices to the Fourth Judicial District Court, Ada County, and written notices to the Ada County Prosecuting Attorney's office, Mr. Mangum identified his place of confinement, including an address, and requested final disposition of the pending complaint against him, even including the correct case number. While this information was submitted by Mr. Mangum, not the California Warden's office, proper information was conveyed to the correct parties. The State did not claim it lacked notice that Mr. Mangum wanted to resolve the Ada County charges, that it had no idea where Mr. Mangum was being held in prison in California, the length of his California prison sentence, his parole eligibility, or good time/credit for time served; rather the State only claimed that it lacked receipt of proper forms, which it received December 28, 2009. (R., pp.172-176.)

In *Fex v. Michigan,* 507 U.S. 43 (1993), the United States Supreme Court considered whether the 180 day time period under the IAD is triggered by the date the inmate's request for disposition is received by the prosecutor in the receiving state, or the date the request for disposition is received by the warden in the sending state. In *Fex,* the petitioner was serving a sentence in an Indiana prison when he received notice of a detainer lodged by Michigan. *Id.* at 46. He gave Indiana prison officials a request for final disposition of the Michigan charges on September 7, 1988, and the prison mailed the request on September 22. *Id.* The request was received by the Michigan court and prosecutor on September 26, and the petitioner was brought to trial on March 22, 1989, 177 days after his request was received by Michigan officials, but 196 days after his request was delivered to Indiana prison official. *Id.* The petitioner claimed the 180 day time period under the IAD was triggered when he delivered his request for

disposition to prison officials, not the day the request was received by Michigan officials, and moved to dismiss the Michigan charges based on a violation of the IAD. *Id.*

The outcome of the Petitioner's claim was contingent upon interpretation of the following language in the IAD: "within one hundred and eighty days after he shall have caused to be delivered." *Id.* at 47. The Court first rejected outright the petitioner's contention that mere transmittal of the IAD request to prison authorities commences the 180 day period, irrespective of whether the request is ever received by the receiving State. *Id.* at 47-48. The Court then considered the more difficult question of whether the 180 day period must be computed from the date the request is transmitted to prison authorities, or from the date when delivery is actually made to the receiving State. *Id.* at 48.

The Court rejected the former interpretation, noting that it was "more reasonable to think that the receiving State's prosecutors are in no risk of losing their case until they have been *informed* of the request for trial." *Id.* at 50. The Court relied on other portions of the IAD for its conclusion "that the receiving State's receipt of the request starts the clock." *Id.* at 51. Most significant for the Court was the IAD's provision requiring the Warden to forward the request "by registered or certified mail, return receipt requested." *Id.* The Court found it particularly compelling that the IAD provides for documentary evidence of the date the request is delivered to officials in the receiving State, but provides no such record for proving the date on which a prisoner transmits the request to prison officials. *Id.* The Court thus held the 180 day time period under the IAD "does not commence until the prisoner's request for final disposition of the charges against him has actually been delivered to the court and prosecuting officer of the jurisdiction that lodged the detainer against him." *Id.* at 52. The decision in *Fex*

emphasizes the importance of the court and prosecutor in a receiving State that issues a detainer against a prisoner receiving actual notice of the request for disposition under the IAD.

A review of the Ninth Circuit's interpretation of IAD is also instructive. *See State v. Johnson*, 196 F.3d 1000 (9th Cir. 1999). The *Johnson* Court was concerned with whether a letter, sent to the district court by the prisoner's public defender notifying the court of Johnson's invocation of his IAD right, substantially complied with the "written notice" of IAD. *Id.* 196 F.3d at 1004. The Ninth Circuit concluded that the letter satisfied the requirements under IAD as it was "undisputed that the public defender's letter to the court contained the information required by the IAD to be conveyed to the district court, for the letter expressly stated that Johnson was serving a sentence in the state of Washington and that he requested a speedy trial. *Id.* Likewise, in *United States v. Berg*,[5] the prisoner, Berg, had mailed a letter, entitled "Demand for Speedy Trial," which referenced the IAD, to both the prosecuting U.S. Assistant Attorney and court. *Id.* at 1. A few months later, Berg mailed a second "Demand for Speedy Trial" to the prosecutor and the court. *Id.* In both filings Berg "listed his address as the New Mexico Department of Corrections in Clayton, New Mexico and demanded that there be timely disposition of the pending federal charge pursuant to the IAD." *Id.* The Court concluded that Berg's filing substantially complied with IAD:

> it seems clear that the defendant's demands for a speedy trial substantially complied with the information required under the IAD. Both of the filings sent to the court and the U.S. Attorney's office were captioned with his name and the correct case number and were titled "*DEMAND FOR SPEEDY TRIAL.*" . . . They expressly stated that the defendant was requesting a speedy trial under the IAD. In the second letter dated January 11, 2011, he also indicated that he was "sentenced and in custody."

[5] *U.S. v. Berg*, 2011 WL 3471216 (D. Guam 2011).

*Id.* at 4.

Here, like in *Johnson* and *Berg*, there is no question the proper court and the proper prosecuting agency that had lodged the detainer against Mr. Mangum received actual notice of Mr. Mangum's request for disposition as of August 28, 2009, which is confirmed by certified mail receipts, and that Mr. Mangum substantially complied with the IAD. (R., pp.95-101.) Moreover, both the court's and the prosecutor's actual notice and knowledge of the request for disposition is clear from a review of the transcript of the hearing held in Mr. Mangum's absence before Magistrate Judge Hicks on October 19, 2009. (*See* 10/19/09 Tr., p.6, L.16 – p.7, L.4.) In fact, at the hearing the deputy prosecutor acknowledged that he had been in contact with the California Department of Corrections and Mr. Mangum's California Public Defender and that Mr. Mangum "has been in the custody of the Department of Corrections there for a couple weeks now. . . ." (10/19/09 Tr., p.6, L.16 – p.8, L.17.)

Indeed, no one appears to dispute that both the court and the prosecutor's office had actual knowledge and notice of both the detainer and Mr. Mangum's repeated requests for speedy resolution of the pending charges. The Idaho Legislature has mandated that the IAD "shall be liberally construed so as to effectuate its purpose." Idaho Code § 19-5001(i). It would subvert the purpose of the IAD if the agency which issued the detainer and received actual notice of an inmate's desire to resolve the detainer were allowed to claim ignorance until receiving formal notice of the inmate's request for final disposition. This is precisely what the prosecutor asked and precisely what the district court ordered. The district treated December 28, 2009, the date the Ada County Prosecutor's office received *formal* notice from the California Warden of Mr. Mangum's *formal* request to initiate proceedings under the IAD, as the triggering

date for the 180 day deadline. (R., pp.167, 233.) As such, the district court erred finding that a IAD was not triggered until a *formal* detainer from Idaho was ultimately was lodged in California against Mr. Mangum on December 16, 2009 and the *formal notice* was sent from the California facility where Mr. Mangum was being held because Mr. Mangum had provided actual notice to both the court and prosecutor of his intent to invoke the provisions of I.C. § 19-5001.

3. Mr. Mangun Substantially Complied With The Certificate Of Status Of Inmate Requirement Of I.C. § 19-5001

As set forth above, I.C. § 19-5001 (c)(1) provides:

> The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of the commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner.

I.C. § 19-5001 (c)(1). The purpose of the certificate of status is to "allow[] the prosecutor to make a rational decision whether to prosecute and the State may, for example, decline to prosecute upon learning the prisoner is already serving a lengthy sentence elsewhere on a more serious charge." *State v. Moe*, 581 N.W.2d 468, 471-472 (N.D. 1998). Both the Ninth Circuit and the Idaho Legislature mandate that the IAD statute must be liberally construed to effectuate its purpose. *See State v. Johnson*, 196 F.3d 1000 (9th Cir. 1999); Idaho Code § 19-5001(i). Thus, the question before this Court is whether Mr. Mangum substantially complied with I.C. § 19-5001.

Mr. Mangum asserts that he substantially complied with I.C. § 19-5001 (c)(1) as he provided all of the information needed for the prosecutor to make a decision to prosecutor his case, i.e. his term of the commitment, the time he has already served, the time remaining to be served on the sentence, his good time credit, and his

approximate parole eligibility date. (*See* R., pp.11-15.) Idaho courts have not yet addressed this issue so we must look to other jurisdictions for guidance. *See U.S. v. Berg*, 2011 WL 3471216 (D. Guam 2011); *United States v. Dent*, 149 F.3d 180 (3rd Cir. 1998); *State v. Roberts*, 427 So.2d 787 (Fla. Dist. Ct. App. (1983); *State v. Smith*, 858 F.2d 416 (N.M. Ct. App. 1993). In *Dent*, the defendant sent a letter to the federal district court in Pennsylvania requesting a speedy resolution of his outstanding federal charges while incarcerated in New York State on unrelated charges. *Id.* 149 F.3d at 183, 186. Dent's letter identified his current place of incarceration, but did not reference the IAD or include the information which must accompany the request. *Id.* at 186. Dent argued that his letter invoked the IAD and that the "government already possessed most of the necessary information concerning his case and his noncompliance was solely the fault of the New York state penal authorities." *Id.* In finding that Dent did not substantially comply with the IAD requirements, the Court observed that "Dent's letter did not include his term of confinement, the time already served, the time remaining to be served on his sentence, or any information concerning good-time credits or parole eligibility as required by Article III." *Id.* at 187.

In *Smith*, the defendant, while incarcerated in Texas, sent a letter to New Mexico authorities attempting to invoke IAD. *Id.* 858 P.2d at 417-420. Smith's letter gave authorities notice of his prior incarceration in Texas and unlike the defendant in *Dent*, expressly requested IAD processing. *Id.* at 420. Smith argued that his letter provided New Mexico authorities of "actual notice" sufficient to trigger the time requirements of IAD. *Id.* The *Smith* Court held that although Smith did not have to provide the actual certificate inmate statute to substantially comply with IAD, "he did have an obligation to furnish the information that would be contained therein." *Id.* Similarly, in *State v.*

*Roberts, supra*, the Florida District Court of Appeal held the defendant, Roberts, was entitled to IAD relief even though he did not provide authorities with a formal certificate of inmate statute because he submitted a memorandum that stated his "jail credit time, a conditional early release date, a maximum incarceration date and a parole eligibility date." *Id.* at 789-790. The *Roberts* Court observed, "If a prisoner makes a good faith effort to bring himself within the Agreement's operation, and omits nothing essential to the Agreement's operation, then his failure of strict compliance will not deprive him of its benefits." *Id.* at 790 (quoting *State ex rel. Saxton v. Moore*, 598 S.W.2d 586, 590 (Mo. App. 1980), *see also U.S. v. Berg*, 2011 WL 3471216 (D. Guam 2011) (finding that the defendant had substantially complied with the certificate of inmate status requirement by demanding a speedy resolution of his pending federal charge and providing the address of the New Mexico Department of Corrections where he was currently serving his sentence.)

In the instant case, in additional to providing actual notice to both the court and prosecuting attorney of his request to invoke the IAD, Mr. Mangum provided authorities with his California case number (08CF-2945), his term of the commitment (5 years), the time he has already served (233 days), the time remaining to be served on the sentence, his good time credit (116 days), and his approximate parole eligibility date (August of 2012). (R., pp.11-15.) Additionally, at least as of October 19, 2009, the prosecutor was well aware of Mr. Mangum's location and been in contact with both the California Department of Corrections and Mr. Mangum's California attorney. (10/9/09 Tr., p.6, L.16 – p.8, L.17.) It is also apparent that the Ada County Deputy Prosecutor had also decided that Mr. Mangum's case was going to be prosecuted as evidenced by his statements to the court on October 19, 2009. (10/9/09 Tr., p.8, Ls.12-18 (stating

that California has "given him the forms that he needs to fill out to get this going, and so we are just waiting to receive those so we can do what we can from out end.".)

Given Mr. Mangum's substantial compliance with the IAD, as well as both the prosecutor's and the court's actual knowledge of Mr. Mangum's desire to resolve the outstanding detainer, the triggering date for the 180 day time limit should commence on the date Mr. Mangum's request for disposition were received by to the Ada County Prosecutor's office and the Ada County Court Clerk's office, as evidenced by the certified mail receipts: August 28, 2009. As of this date, Mr. Mangum was incarcerated in a California prison; he had provided the prosecutor's office and the court clerk's office with all relevant and necessary information under the IAD to permit the State to secure his return to Idaho.

The State's failure to bring Mr. Mangum to trial by February 24, 2010, 180 days after receipt of Mr. Mangum's request for disposition, requires dismissal of the charges in the instant matter with prejudice. Even assuming Mr. Mangum's request that the district court consider his motions to dismiss and suppress tolled the 180 day period, because this request happened long after the 180 day period had already expired, the district court erred in concluding that Mr. Mangum received a trial date within the 180 day period, that any delays beyond that period were attributable to him, and as a result, his rights under the IAD were not violated.

Mr. Mangum asks this Court to vacate the district court's order denying his motion to dismiss and remand his case to the district court for the entry of an order dismissing the instant matter with prejudice. I.C. § 19-5001. In the event this Court does not order dismissal of Mr. Mangum's case based on a violation of the IAD, because the district court erred in denying Mr. Mangum's motion to suppress evidence

that was gained as a result of officers' unlawful entry into his apartment, this Court should reverse the district court's order denying the motion to suppress and remand Mr. Mangum's case for further proceedings.

II.

## The District Court Erred In Concluding Mr. Mangum Impliedly Consented To Officers' Entry Into His Apartment

### A. Introduction

Observations made by law enforcement officers who arrested Mr. Mangum in his apartment provided probable cause for the issuance of a warrant to search Mr. Mangum's apartment, which in turn formed the basis for the charges against Mr. Mangum in the instant matter. The officers' entry into the apartment was without Mr. Mangum's consent and was thus unlawful, rendering the officers' observations a product of an unlawful entry and presence. The district court's denial of Mr. Mangum's Motion to Suppress based on its conclusion that Mr. Mangum impliedly consented to the entry is erroneous and contrary to the evidence.

### B. Standard Of Review

When reviewing an order granting or denying a motion to suppress evidence, Idaho appellate courts defer to the trial court's factual findings which are not clearly erroneous; factual findings supported by substantial competent evidence are not clearly erroneous. *State v. Smith,* 144 Idaho 482, 485 (2007) (citing *State v. Klingler,* 143 Idaho 494, 495-96 (2006)); *State v. Araiza,* 147 Idaho 371, 374 (Ct. App. 2009). However, a trial court's legal conclusions and whether constitutional requirements have been satisfied based on the facts found are freely reviewed. *Id.*

C. The District Court Erred In Concluding Mr. Mangum Impliedly Consented To Officers Entry Into His Apartment

Mr. Mangum neither expressly nor impliedly consented to law enforcement officers' entry into his apartment. As such, all evidence gained as a result of that unlawful entry, including any observations of items in plain view, must be suppressed. The district court's conclusion that by his words and conduct, Mr. Mangum impliedly consented to the officers' entry is not supported by substantial evidence and is thus clearly erroneous.

The Fourth Amendment to the United States Constitution demands "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated[.]" U.S. Const. amend IV. Warrantless searches and seizure are presumptively unreasonable. *State v. Anderson*, 140 Idaho 484, 486 (2004). While it is true that numerous exceptions have been carved out to permit both warrantless seizures and searches, the State bears the burden of proving a warrantless search or seizure falls within a well-established exception to the warrant requirement. *State v. Smith,* 144 Idaho 482, 485 (2007).

Evidence found in plain view is an exception to the warrant requirement. *Coolidge v. New Hampshire,* 403 U.S. 443, 465 (1971). The plain view exception to the warrant requirement must meet specific standards to be applicable. An officer must be in a place he or she is lawfully entitled to be at the time the item in plain view is observed, and the evidentiary value or illegal nature of the item observed must be immediately apparent. *Id.* at 466; *see also Horton v. California,* 496 U.S. 128 (1990) (dispensing with inadvertence requirement of discovery of item in plain view, but otherwise affirming plain view exception announced in *Coolidge*).

Consent is also a well-established exception to the warrant requirement. *Smith*, 144 Idaho at 488. The State bears the burden of demonstrating by a preponderance of the evidence that consent was voluntarily given, rather than the product of duress or coercion, direct or implied. *Schneckloth v. Bustamonte,* 412 U.S. 218, 221 (1973); *State v. Jaborrra,* 143 Idaho 94, 97 (Ct. App. 1994). The voluntariness of consent must be assessed by consideration of the totality of the circumstances surrounding the consent. *United States v. Drayton,* 536 U.S. 194, 201 (2002). Consent may be granted explicitly by words, or implicitly by gestures or conduct. *State v. Moran-Soto,* 150 Idaho 175, 180 (Ct. App. 2010) (citations omitted). However, acquiescence to a claim of lawful authority is not consent and does not satisfy the state's burden of showing that consent has been freely and voluntarily given. *Bumper v. North Carolina,* 391 U.S. 543 (1968).

Here the district court concluded that Mr. Mangum impliedly consented to officers entering his apartment by telling officers "let's go back to my apartment to get my license." (R., p.222.) The district court discounted the fact that officers escorted Mr. Mangum back to his apartment, and found it was reasonable for Mr. Platts to believe Mr. Mangum was cooperative and therefore consenting, because it was in Mr. Mangum's "best interest to get identification to prove his identity to the officers." (R., p.222.) The finding of consent rendered the officer's observation of items of possible evidentiary value in plain view lawful. (R., p.223.) The district court's analysis fails to consider the full testimony of Marshal Platts, Ms. French, Mr. Mangum and Justin Kendall.

As previously noted, Mr. Platt testified that when he told Mr. Mangum he needed to see some identification, Mr. Mangum maintained that he was not Derrick and he did not have any identification on him. (8/10/10 Tr., p.149, Ls.14-22.) Mr. Platt responded

by telling Mr. Mangum "[w]ell, *let's go in your apartment and get your ID[,]*" and when Mr. Mangum maintained he was not Derrick, *"[w]ell, I'd like to see some ID, and then I can prove that you're not Derrick, who we're looking for.*" (8/10/10 Tr., p.149, L.23-p.150, L.5 (emphasis added).) According to Mr. Platt, as he and Mr. Mangum were walking toward his apartment, Mr. Mangum "kept telling me that he's not Derrick. And I kept saying, '*Well, just prove it to me, and you can go.*'" (8/10/10 Tr., p.154, ls.1-4 (emphasis added).) Mr. Platt tried to put a better spin on the events later in his testimony, claiming Mr. Mangum told him, "Let's go back to my apartment and get my license. It's in my wallet in my apartment[,]" (8/10/10 Tr., p.160, Ls.10-13), and "I'm not Derrick that you're looking for. But, here, my ID is on the table here. Let me find my wallet." (8/10/10 Tr., p.151, Ls.2-7.) According to Mr. Platt, Mr. Mangum walked into the apartment first and Mr. Platt followed. (8/10/10 Tr., p.151, Ls.7-18.)

According to Ms. French, when she reached Mr. Mangum's apartment, the door was open. (8/10/10 Tr, p.132, Ls.1-2.) Ms. French was with another officer at the time and decided to knock on the door, announcing that she was Amber French and she was from "ABC Realty." (8/10/10 Tr., p.132, Ls.3-7.) According to Ms. French, Detective Hazel and the federal officers walked up behind her with Mr. Mangum as she was knocking on the door. (8/10/10 Tr., p.133, Ls.15-19; p.134, Ls.18-25.) Specifically, Ms. French noticed Detective Hazel, Mr. Platt, and Mr. Mangum walking together toward the apartment. (8/10/10 Tr., p.134, Ls.18-25.) Ms. French entered the apartment, but did not recall if she was the first person to go inside: "when I saw them coming, they – I think we all went in at the – like I stepped in front of them. I'm at the door, and they're up behind me. I stepped into the side, I'm looking at the cable guy."

(8/10/10 Tr., p.134, Ls.17-22.) Ms. French admitted that she may have been the first person to enter Mr. Mangum's apartment. (8/10/10 Tr., p.136, Ls.21-23.)

Considering the totality of the circumstances, looking only at the testimony of Ms. French and Mr. Platt, the State did not establish by a preponderance of the evidence that Mr. Mangum voluntarily consented to the officers' entry into his apartment. Ms. French's testimony, coupled with that of Mr. Platt, reflects that Mr. Mangum was surrounded by at least three law enforcement officers by the time he reached the threshold of his apartment. In addition, Ms. French testified that she may have entered Mr. Mangum's apartment first and she did not testify that she had his consent to do so. Finally, Mr. Platt's own testimony demonstrates that he told Mr. Mangum he *had* to prove he was who he said he was by showing Mr. Platt his identification before Mr. Platt would let Mr. Mangum go; Mr. Platt also made it clear he would not take no for an answer and would not accept anything short of seeing Mr. Mangum's identification as proof of his identity.

In addition, taking into account Mr. Mangum's testimony further demonstrates that Mr. Mangum did not consent to the officers' entry into his apartment, either implicitly or explicitly. Mr. Mangum testified that Mr. Platt initially drew his weapon, asked for Mr. Mangum's name, and then advised Mr. Mangum if he was who he said he was, everything would be fine. (8/3/10 Tr., p.52, L.8-p.53, L.16.) Mr. Platt escorted Mr. Mangum back to his apartment and continued to insist on seeing Mr. Mangum's identification, despite Mr. Mangum's protestations that he was not "Derrick." (8/3/10 Tr., p.53, L.12 –p.54, L.25.) When they reached the apartment, Mr. Platt entered while Mr. Mangum was still outside, picked items up off the kitchen table and asked Mr. Mangum about them, and then pulled Mr. Mangum's identification out of his wallet

and placed him under arrest. (8/3/10 Tr., p.55, l.7-p.56, L.16.) The district court did not discount Mr. Mangum's recitation of events and did not deem his testimony to lack credibility. (R., p.223.)

Mr. Mangum's acquiescence to the officers' apparent authority does not constitute voluntarily consent. Mr. Mangum did not consent to the officers' warrantless entry into his apartment. Thus, officers were not lawfully entitled to be where they were at when they observed the items in "plain view" which provided the basis for the search warrant of Mr. Mangum's apartment. (8/3/10 Tr., p.45, Ls.10-15 (Testimony from Boise City Detective Justin Kendall that he *could not* see items on the kitchen table from outside of the apartment through the open front door).) Accordingly, the district court erred in denying his motion to suppress.

## CONCLUSION

Mr. Mangum respectfully requests that this Court vacate the district court's order denying his motion to dismiss and remand his case to the district court for the entry of an order dismissing the instant matter with prejudice. Alternatively, Mr. Mangum asks that this Court vacate the district court's order denying his motion to suppress and remand his case for further proceedings.

DATED this 20th day of December, 2011.

ERIC D. FREDERICKSEN
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 20th day of December, 2011, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

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RICHARD D GREENWOOD
DISTRICT COURT JUDGE
E-MAILED BRIEF

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EVAN A. SMITH
Administrative Assistant

EDF/eas